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Situation of human rights in East Timor

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report on the joint mission to East Timor undertaken by the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, the Special Rapporteur of the Commission on the question of torture and the Special Rapporteur of the Commission on violence against women, its causes and consequences, in accordance with Commission resolution 1999/S-4/1 of 27 September 1999.

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I. Introduction

1. On 4 to 10 November 1999, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, the Special Rapporteur of the Commission on the question of torture, Sir Nigel Rodley, and the Special Rapporteur of the Commission on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, conducted a joint mission to East Timor. The visit was undertaken pursuant to resolution 1999/S-4/1 of 27 September 1999, entitled "Situation of human rights in East Timor", adopted by the Commission on Human Rights at its special session on the situation in East Timor, held from 24 to 27 September 1999. The special session had been convened because of increasing reports of widespread violence and serious human rights violations in East Timor, following the popular consultation on the future status of East Timor held on 30 August 1999. This was the fourth special session of the Commission: special sessions had been held, in 1992 and 1993, on the situation in the former Yugoslavia and in 1994 on the situation in Rwanda.

2. In the resolution, the Commission condemned the widespread, systematic and gross violations of human rights and international humanitarian law in East Timor, including widespread violations and abuses of the right to life, personal security, physical integrity and the right to property. The Commission further expressed its deep concern at the widespread forced removal and displacement of persons to West Timor and other nearby areas, the serious humanitarian situation of the displaced East Timorese, the violence and intimidation directed against international agencies as well as most of the independent media, and the lack of effective measures to deter or prevent militia violence and the reported collusion between the militias and members of the Indonesian armed forces and police in East Timor.

3. The Commission furthermore affirmed that all persons who committed or authorized violations of human rights or international humanitarian law were individually responsible and accountable for those violations and that the international community would exert every effort to ensure that those responsible were brought to justice. The Commission further affirmed that the primary responsibility for bringing perpetrators to justice rested with national judicial systems.

4. The Commission called upon the Government of Indonesia to ensure, in cooperation with the Indonesian National Commission on Human Rights, that the persons responsible for acts of violence and flagrant and systematic violations of human rights were brought to justice and to ensure that human rights and international humanitarian law were fully respected in regard to all persons within its own jurisdiction or under its control. It also called upon the Government to continue to implement its obligations under the Agreement of 5 May 1999 and to guarantee the voluntary return of all refugees and displaced persons, including those who had been forcibly displaced to camps in West Timor. The Government was also called upon to ensure immediate access by humanitarian agencies to displaced persons, both in East Timor and West Timor as well as other parts of the Indonesian territory, to guarantee the security and free movement of international personnel and to continue to allow the deployment of emergency humanitarian assistance.

5. The Commission called upon the Secretary-General to establish an international commission of inquiry in order to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote. The commission of inquiry is to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions and to make the commission's report available to the Security Council, the General Assembly and the Commission on Human Rights at its fifty-sixth session.

6. Lastly, in the same resolution, the Commission on Human Rights requested the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on Enforced or Involuntary Disappearances to carry out missions to East Timor and report on their findings to the Commission at its fifty-sixth session and, on an interim basis, to the General Assembly at its fifty-fourth session.

7. Following the request by the Commission on Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, the Special Rapporteur on the question of torture, Sir Nigel Rodley, and the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, agreed to conduct a joint mission to East Timor in early November. By a letter dated 26 October 1999 to the Minister for Foreign Affairs of Indonesia, the United Nations High Commissioner for Human Rights informed the Government of Indonesia of the planned mission and requested that the Government meet with the Special Rapporteurs in Jakarta. On 3 November 1999, the Government replied that it had

deferred consideration of the proposed visit by the Special Rapporteurs and that a decision would be taken on the matter after a period of internal consolidation of the newly appointed Government. In the light of the urgent request by the Commission on Human Rights for an immediate investigation into and report on the human rights situation in East Timor, it was finally decided that the Special Rapporteurs and their supporting staff would carry out a joint fact-finding mission to East Timor from 4 to 10 November 1999. The Special Rapporteurs regret that they were unable to visit Jakarta to meet with government representatives and the National Commission of Inquiry, and that they did not have the opportunity to visit West Timor and other locations relevant to their investigations.

8. The mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions was established by the Economic and Social Council in its resolution 1982/35 of 7 May 1982. Asma Jahangir was appointed Special Rapporteur on 12 August 1998 and her mandate was renewed for a period of three years by the Commission on Human Rights in its annual resolution on extrajudicial, summary or arbitrary executions, resolution 1998/68 of 21 April 1998.

9. The mandate of the Special Rapporteur on the question of torture was established in 1985 by the Commission on Human Rights in its resolution 1985/33 of 13 March 1985. Sir Nigel Rodley was appointed Special Rapporteur in 1993 and his mandate was renewed by the Commission on Human Rights in its resolution 1998/38 of 17 April 1998 for a period of three years.

10. The mandate of the Special Rapporteur on violence against women, its causes and consequences was created by the Commission on Human Rights in its resolution 1994/45 of 4 March 1994 and renewed by the Commission in its resolution 1997/44 of 11 April 1997 for a further period of three years. Radhika Coomaraswamy was appointed to the position at that time and continues to serve as Special Rapporteur.

11. The present report is based largely on information gathered and observations made by the Special Rapporteurs during their mission to East Timor and focuses on human rights abuses committed since January 1999. Many of the observations presented are not conclusive and are mainly aimed at highlighting areas and issues requiring further attention, including criminal and forensic investigation. While information about alleged extrajudicial killings, torture, sexual violence and other human rights abuses is now gradually emerging as on-site investigations are getting under way, the reports received so far remain incomplete. Further investigations are urgently needed in order to establish the full scope and nature of the atrocities committed in East Timor.

Programme of the visit

12. Upon arrival in East Timor, the Special Rapporteurs met with the Acting Special Representative of the Secretary-General and other staff of the United Nations Transitional Administration in East Timor (UNTAET), who briefed them on the overall political, humanitarian and human rights situation in East Timor. In Dili the Special Rapporteurs further had the opportunity to meet with Bishop Carlos Belo. Discussions were also held with representatives of the National Council of Timorese Resistance (CNRT).

13. The visit included several field trips outside Dili. Ms. Jahangir visited the towns of Suai, Maliana and Oekusi, some of the places from which she had received allegations of killings allegedly committed jointly by the militia and the military, and which had had a strong pro-integration militia presence before and after the ballot. In Suai, the Special Rapporteur also inspected the local church grounds, where a large number of persons are feared to have been killed in a militia assault on the town's two churches. Ms. Jahangir and Sir Nigel Rodley visited Aileu, where they met the Deputy Commander of the Falintil movement, Taur Matan Ruak. In Aileu, the Special Rapporteurs also had the opportunity to speak to five former militiamen held in custody by the Falintil forces. The three Special Rapporteurs further visited Tibar and Liquica, where they heard individual testimonies of alleged human rights violations. Further interviews with victims and witnesses were conducted at UNTAET headquarters in Dili.

14. The Special Rapporteurs met with the Force Commander of the International Force, East Timor (INTERFET), Major General Cosgrove, and the delegation was briefed at INTERFET headquarters on the investigative work carried out by the INTERFET military police and the United Nations civilian police into reported cases of extrajudicial killings. After the briefings Ms. Jahangir, accompanied by INTERFET and United Nations civilian police and forensic staff, attended the exhumation of remains from a grave site believed to be those of a person allegedly extrajudicially killed by militia elements. Ms. Jahangir and Sir Nigel also visited the INTERFET Force Detention Centre where they spoke with persons detained on suspicion of involvement in extrajudicial killings and other grave human rights violations.

15. In Dili the Special Rapporteurs held discussions with representatives of United Nations agencies and other international organizations active in East Timor, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the United Nations Children's Fund (UNICEF), the International Committee of the Red Cross (ICRC), Médecins sans Frontières and Timor Aid. Discussions were also held with representatives of Amnesty International carrying out investigative work in East Timor. In Dili the Special Rapporteurs met with local non-governmental organizations, including Yayasan Hak, Fokupers and the East Timor Human Rights Commission.

II. Overall human rights developments and general background

16. The recent crisis in East Timor should be considered against the background of a long history of serious human rights abuses and political tensions which have taken place since the annexation of the Territory by Indonesia in 1975. The Special Rapporteurs of the Commission on Human Rights have for the last several years reported on and expressed their deepening concern over the human rights situation in East Timor. There have been continuing allegations of extrajudicial killings, torture, disappearances and acts of sexual violence attributed to members of the Indonesian National Army (TNI) and pro-Government militias and paramilitary groups.

17. On 27 January 1999, the Government of Indonesia announced its readiness to rescind its annexation of East Timor and grant it independence, in the event that the Government's offer of autonomy was rejected. To begin this process, on 11 March 1999, Portugal and Indonesia agreed to a United Nations-supervised ballot to consult the East Timorese people on whether they accepted or rejected the Indonesian Government's proposal for autonomy. On 21 April, an agreement was reached which committed all parties in East Timor, including the armed forces and pro-integration and pro-independence groups, to end violence in the Territory. The agreement also created a Commission on Peace and Stability for East Timor, composed of representatives of pro-independence and pro-integration groups, the local authorities, local police commanders and TNI.

18. On 5 May, Indonesia, Portugal and the Secretary-General signed an Agreement in New York laying a constitutional framework for the future status of East Timor and establishing the modalities for the popular consultation. The Agreement emphasized the responsibility of the Indonesian authorities in securing an environment free from violence and intimidation and conducive to the conduct of the popular consultation. The Agreement also stressed that the absolute neutrality and impartiality of TNI and the Indonesian police would be essential in that regard.

19. On 11 June 1999, the United Nations Mission in East Timor (UNAMET) was established to organize and conduct the popular consultation. The preparations and the conduct of the voting proceeded despite several incidents of violence, threats and intimidation, mainly by pro-Government militia elements. After having been postponed several times, the popular consultation was finally held on 30 August, with some 98 per cent of the registered electorate turning out to vote. On 4 September, the Secretary-General announced the results of the popular consultation, in which more than 78 per cent of the voters had rejected the Indonesian Government's autonomy proposal and called upon all parties to bring an end to the violence and to begin in earnest a process of dialogue and reconciliation.

20. However, after this announcement militia groups and elements of the Indonesian security forces unleashed a wave of violence in which pro-independence supporters were terrorized and killed. Private homes, public buildings and infrastructure were systematically burned and destroyed. More than 400,000 people were forced to leave their homes and flee to the hills, or were forcibly displaced by TNI and militia units to areas outside East Timor, mostly in West Timor and other neighbouring islands in Indonesia.

21. Owing to the escalation of the violence, the UNAMET mission was forced to evacuate its staff from East Timor on 14 September. Some 1,400 East Timorese civilians who had fled the terror in Dili and other locations and found refuge in the United Nations compound were also airlifted to safety in connection with the United Nations evacuation. The violence and destruction continued unabated after the departure of the mission, despite repeated calls on the Government to control the situation and respect its obligation to ensure order and security.

22. On 12 September, the Government of Indonesia formally agreed to the presence of an international intervention force in East Timor. This force, known as the International Force, East Timor (INTERFET), began deploying on 20 September and is now engaged in providing security, facilitating distribution of humanitarian aid and re-establishing law and order in East Timor. On 25 October, the Security Council decided to establish a United Nations Transitional Administration for East Timor (UNTAET), with a broad three-year mandate to support the Territory's

transition to independence. Its mission is to provide security and maintain law and order, establish an administration and help develop civil and social services. It will also coordinate the delivery of humanitarian aid and support capacity-building for self-government.

A. Extrajudicial, summary or arbitrary executions

23. In her last report to the Commission on Human Rights (E/CN.4/1999/39/Add.1), the Special Rapporteur noted that she had continued to receive reports of human rights abuses in East Timor and other parts of Indonesia attributed to the police and the military. The reports indicated that political protesters and members of ethnic minorities had been deliberately targeted and subjected to ill-treatment in detention, which at times had led to their death. The Special Rapporteur had sent urgent appeals and allegations to the Government of Indonesia regarding cases in which demonstrators had been shot dead by Indonesian security forces or been killed as a result of indiscriminate use of force by Indonesian army units. The Special Rapporteur noted that investigations into such incidents were rarely carried out and the perpetrators almost never held accountable for their actions. In response to increasing reports of violence and human rights abuses attributed to Indonesian government forces since the beginning of the year, the Special Rapporteur had repeatedly sent urgent appeals to the Government urging the authorities to protect the safety and integrity of the civilian population in East Timor and to ensure that the police and military were conducting their operations in strict compliance with international human rights and humanitarian law standards.

24. In this connection, the Special Rapporteur wishes to draw attention to the report of her predecessor, Bacre Waly Ndiaye (E/CN.4/1995/61/Add.1), submitted following his mission to East Timor from 3 to 13 July 1994, in which he concluded that members of the security forces responsible for human rights violations enjoyed virtual impunity for their actions. He noted a sense of terror among many Timorese he had the opportunity to meet and reported on the contemptuous manner with which the authorities were dealing with violations of human rights by the armed forces.

25. Since the annexation of the Territory in 1975, there have been repeated allegations of extrajudicial killings in East Timor. To the Special Rapporteur's knowledge, these allegations have never been properly investigated by the Government of Indonesia. The perpetrators have only exceptionally been brought to justice, and in the cases where they have been punished, the sentences have been disproportionately mild for the crime committed. In other cases, the perpetrators have been convicted for crimes of a less serious nature than the original accusation. Local non-governmental organizations assert that it was the long-standing virtual impunity enjoyed by the Indonesian army and police which emboldened militias and government forces to carry out widespread killings in such a brazen manner following the announcement of the results of the popular consultation held on 30 August 1999.

26. It is reported that, following the announcement of an offer for autonomy or independence by the Government of Indonesia in January 1999, pro-integration groups launched a campaign of intimidation and violence directed against persons and communities known for their pro-independence sympathies. Reportedly, on 6 April 1999, at least 25 people who had been sheltered in the church in Liquica were killed by pro-integration militias believed to belong to the Besi Merha Putih group. On 7 April, the Permanent Mission of Indonesia to the United Nations issued a press release stating that five people had been killed in Liquica, including a local police officer, following the escalation of a heated exchange between pro-integrationists and pro-independence supporters. It is further reported that on 17 April, pro-Government militias killed at least 13 people in Dili in a series of armed attacks on civilians.

27. Acts of violence and intimidation by pro-independence groups were also reported in the same period. The Minister of Defence of Indonesia is reported to have stated that until the signing of the ceasefire agreement on 21 April, pro-independence groups had committed 30 violent acts, including 14 armed terrorist attacks, the burning of a village, 2 violent demonstrations, 6 armed attacks against pro-integration groups, 2 armed attacks against the security apparatus, 3 murders and 2 acts of torture against members of pro-integration groups.

28. The violence which had marked the months preceding the popular consultation on 30 August intensified after the ballot and became increasingly systematic and widespread, particularly following the announcement of the results on 4 September. Killings are mostly attributed to militia groups supported or assisted by TNI and the police. While many of these acts appear to have been selective and targeted against specific individuals or families, some atrocities were of a more indiscriminate nature and were apparently aimed at terrorizing and intimidating entire villages or communities perceived as hostile to the pro-integration cause. This campaign of terror and violence, as reported by several witnesses, including UNAMET staff, appears to have been well planned and executed in reprisal for the vote in favour

of independence for East Timor. Pro-independence Timorese, church leaders, teachers and CNRT activists were deliberately identified, hunted down and extrajudicially killed. While most of the reported killings appear to have been concentrated in the western and central parts of East Timor, particularly the areas in and around Suai, Maliana and Liquica, recent reports emerging from other provinces suggest that few areas in East Timor were spared these atrocities.

29. While in East Timor, the Special Rapporteur heard testimonies describing the attack on Bishop Belo's compound in Dili on 6 September, where more than 2,000 civilians had reportedly taken refuge from the escalating violence in the city. Eyewitnesses told the Special Rapporteur that around 9.30 a.m. Aitarak militia elements together with units of the Indonesian Kostrad special forces surrounded the compound and ordered everyone out. Shortly afterwards, militiamen entered the diocese building and opened fire on the civilians. Witnesses told the Special Rapporteur that they had identified a number of army and Kopassus military intelligence personnel among the assailants dressed in militia uniform, and that TNI Kostrad officers appeared to have been in command of the operation. Reportedly, some 100 militia and army personnel participated in the operation. After the attack, which left an unknown number of persons dead, the bodies of the victims were reportedly loaded onto army trucks parked outside the compound and transported to an unknown location.

30. In Dili, the Special Rapporteur was also briefed by INTERFET and the United Nations civilian police about the investigations into the killing of nine persons in Lospalos on 25 September. It appears that on that date eight persons, including three Catholic priests, two nuns and an Indonesian journalist, were travelling by car when they were stopped by a group of militiamen belonging to the Team Alpha militia group. The eight people in the car and a teenage boy who witnessed the incident were killed, and the car dumped into a nearby river. Six former members of Team Alpha who are accused of the nine murders are currently being held in the Force Detention Centre in Dili. The Special Rapporteur had the opportunity to speak to the detainees in connection with her visit to the Detention Centre. One of them told her that he had been trained, armed and paid by Kopassus intelligence officers to carry out armed militia activities in the Lospalos area. Another former militia member told the Special Rapporteur at the Force Detention Centre that he had received money from his militia leader, in the presence of a TNI officer, and been ordered to kill nine pro-independence sympathizers. The man is accused of having killed one of these persons.

31. During her visit to Maliana on 5 November, the Special Rapporteur spoke to a number of local residents who had witnessed killings and other grave abuses by pro-integrationist militias after the ballot on 30 August. According to their accounts, in the evening of 8 September a group of militias belonging to the Besi Merha Putih group and TNI soldiers arrived in the village in two army trucks. (Witnesses said that weeks before the assault, militia elements had been accommodated at the local TNI base, where they allegedly had received military training.) The villagers said that from 50 to 100 people were killed by the militiamen, reportedly dressed in ninja-like uniforms and armed with machetes, who went from house to house searching for known independence supporters. Many of the persons the Special Rapporteur spoke to said that they had gone to the local police station to seek protection, but the police apparently had refused to intervene.

32. The Special Rapporteur was deeply distressed to hear the testimony of an 11-year-old boy who had witnessed his father being hacked to death by militiamen with machetes. An unknown number of children were among the victims of the atrocities committed in East Timor and many more have been left deeply traumatized from having witnessed acts of unspeakable cruelty. These children now urgently need care and counselling to come to terms with their sorrow and distress.

33. On 5 November, the Special Rapporteur visited the town of Suai, where a large but as yet unconfirmed number of people are feared to have been extrajudicially killed in a militia assault on the local church. It is reported that on 6 September, Maihidin militia elements, backed by TNI soldiers and officers of the Indonesian mobile police, Brimob, surrounded the church grounds and opened fire indiscriminately on the two churches where a large number of local civilians had sought shelter. It is alleged that the bodies of victims of the massacre were taken away on army trucks. Among the victims were Father Hilario Modeira and at least two other priests. The Special Rapporteur visited the scene of the alleged massacre and noted that while bloodstains could still be seen on floors and walls, the grounds had been thoroughly cleaned of other material evidence. A pile of spent cartridges apparently collected from the two churches lay in one of the burnt-down houses. At the scene were also a number of human bones, confirmed by a forensic expert as belonging to a man in his twenties. The origin of the remains is unclear, as the INTERFET military police said that the bones had been brought to the scene after the massacre had occurred. Investigations into the incident in Suai, and other cases of alleged extrajudicial killings, are complicated by the fact that in most cases the

bodies of the victims have been taken away to an unknown location, and spent cartridges and other traces of the incident have been removed from the scene.

34. On 25 November, the Indonesian Commission of Inquiry announced that it had found three graves containing the bodies of 26 persons believed to have been killed in the massacre in Suai. The graves were discovered on Oeluli beach, in the district of Kobalima in West Timor, some 3 kilometres from the border with East Timor and about 20 kilometres from the town of Suai. Three of the bodies were identified as the three priests killed in Suai. Among the bodies were reportedly the remains of at least three children.

35. The Special Rapporteur heard testimonies from different parts of the country of people who had seen dead bodies being transported in trucks. Two women gave eyewitness testimony describing how women had been killed after having been raped by Indonesian police and militia. Their bodies were reportedly taken away to an unknown location in army vehicles. Other persons the Special Rapporteur spoke to claimed that bodies had been dumped in a river, where rubber shoes and other items of clothing had later been found floating. So far the bodies have not been recovered. A former militia member in INTERFET custody whom the Special Rapporteur interviewed stated that he had thrown the bodies of several victims of extrajudicial killings into the river after a militia attack against independence supporters. Some civilians reported that TNI had used boats and ships to transport and dump large numbers of dead bodies into the sea. Only three bodies have so far been recovered from the shores of East Timor, and these reports still remain to be investigated and confirmed.

36. There are currently no reliable estimates as to the number of persons who may have been killed in the last few months. Reports of bodies and graves found are now beginning to reach INTERFET and UNTAET, but the flow of information is still slow as the international agencies have yet to fully re-establish their communication systems and their presence on the ground. More reports are also being received as people gradually return to their homes from West Timor and neighbouring islands.

37. According to information provided by INTERFET and the United Nations civilian police, reports of extrajudicial killings up to 10 November 1999 had reached a total of 1,093 persons. By the time the Special Rapporteur left East Timor, an average of 8 new bodies were being discovered per day. So far 104 bodies have been discovered and 17 additional bodies and 28 grave sites have been reported. There is reason to fear that these confirmed official figures may represent only the tip of the iceberg as more evidence of atrocities is gradually uncovered. Local non-governmental organizations have received information of killings of over 1,500 people. It may further be noted that the eyewitnesses the Special Rapporteur spoke to could seldom specify how many persons had been killed in the incidents they had personally witnessed. This is understandable, considering the panic and terror prevailing before and after the killings.

38. As more than 400,000 people have been displaced from their homes and many of them have lost contact with relatives and family in the process, it is extremely difficult to reach any conclusion as to the total number of missing persons. Among the displaced are also many former militia members and their families. Therefore, it is clear that any reliable estimate of the number of unaccounted-for persons will have to wait until most of the displaced have either been registered and traced or repatriated.

39. There are reports of continuing abuses by militia elements directed against displaced East Timorese civilians in camps in West Timor. It is imperative that these people be allowed to return to their homes and that international agencies gain full access to camps and other places where the displaced are currently accommodated.

40. Currently, INTERFET military police and United Nations civilian police officers are in charge of the investigation of alleged crimes and human rights violations, including extrajudicial killings. In discussions with the Special Rapporteur, both complained of the lack of forensic and other facilities for investigating crime scenes and exhuming bodies of persons alleged to have been extrajudicially killed. This situation has to some extent improved with the arrival of a forensic expert working under UNTAET auspices, but there is still an urgent need to deploy additional experts, including a forensic pathologist, and equipment, such as adequate autopsy facilities, so that investigations can proceed without delay and interruption.

B. Torture and violence against women

41. The Special Rapporteur on the question of torture has followed developments in East Timor pertaining to the mandate for many years. In 1991, the first Special Rapporteur, Peter Kooijmans, visited Indonesia and East Timor; indeed, he was in Dili at the time of the massacre at Santa Cruz cemetery on 12 November 1991. His report to the Commission on Human Rights details his attempts to obtain information on the killings and secure guarantees against ill-treatment of those detained in the wake of the atrocity (E/CN.4/1992/17/Add.1, paras. 46-65). In addition,

the present Special Rapporteur, having failed to elicit an invitation from the Government to visit Indonesia and East Timor, accepted an invitation from the Government of Portugal to visit Lisbon to meet a number of East Timorese persons residing in Portugal who had allegedly been tortured by Indonesian security forces before leaving their country. He found a number of their stories credible.

42. The Special Rapporteur observed that the bulk of the allegations of torture and ill-treatment encountered by the delegation during the joint mission related to such treatment either as a prelude to murder or as taking the form of sexual violence.

43. As far as torture and ill-treatment incidental to murder is concerned, most of the relevant information is contained in the previous section and will not be recapitulated here. Indeed, two alleged survivors of such ill-treatment whom the delegation met in Tibar village on 7 November seemed to have been destined to be murdered but were apparently rescued, with the help of infiltrators among the militiamen involved, by collaborators of the mayor of the village, whom the delegation also met. One, Agosto Fernandes, claimed to have been detained at Dili port and subjected to various bodily assaults and had scars seemingly consistent with his story. This was also the case for the other, João da Costa, allegedly attacked at his house.

44. The Special Rapporteur had received numerous allegations from non-governmental organizations according to which in the first three months of 1999 numerous persons were seized by militia groups, sometimes acting in collaboration with TNI, and subjected to various forms of torture and ill-treatment. Typically, the treatment consisted, as reported, of beatings and wounding with sticks, machetes, spears, knives and rifle butts. While the circumstances of the visit did not permit direct examination of the cases, the Special Rapporteur found them sufficiently substantiated and consistent with each other and with previous allegations to transmit them to the Government of Indonesia for its observations. They will be reflected in his report to the Commission on Human Rights at its fifty-sixth session.

45. The delegation was also given access to the small number of summaries of testimonies received in respect of acts allegedly committed by persons detained by UNTAET. Another document referred to an admission of serious assault by one of the detainees.

46. Since the creation of her mandate in 1994, the Special Rapporteur on violence against women has received many cases of violence against women alleged to have been committed by the Indonesian armed forces in East Timor. In November 1998, the Special Rapporteur visited Indonesia and East Timor. She observed that although there was greater freedom in East Timor, and gestures of good will had been offered by President Habibie, the serious and systematic abuses that prevailed in the Territory continued to create a climate of distrust and suspicion. Women were particularly vulnerable to gender-specific human rights violations, including rape and sexual harassment. Rape often went unreported because of fear of retaliation. The Special Rapporteur noted that before May 1998 rape was used as an instrument of torture and intimidation by certain elements of the Indonesian army in East Timor. Relatives of political opponents were raped by the military as a form of revenge or to force their relatives out of hiding. At the time of her visit, rapes of Timorese women were continuing; however, the Regional Army Commander in Dili assured the Special Rapporteur that he would not tolerate violence against women by the armed forces. When writing her report in December 1998, the Special Rapporteur stated that it was still too early to assess whether the assurances of army officials would be implemented and rapists brought to trial before military tribunals (see E/CN.4/1999/68/Add.3). The Special Rapporteur on violence against women continued to receive allegations of human rights abuses in East Timor throughout the course of 1999.

47. At the fifty-fifth session of the Commission on Human Rights, in April 1999, the Special Rapporteur expressed her concern that the human rights rhetoric that she had welcomed in the report on her mission to Indonesia and East Timor was under threat. She drew attention to recent developments in East Timor and warned that the international community must remain vigilant to the possibility that the clock might be turned back to an earlier era when human rights in Indonesia were violated with even greater impunity.

48. During the joint mission, the Special Rapporteur on violence against women heard testimonies from rape survivors and eyewitnesses to human rights violations. She found evidence of widespread violence against women in East Timor during the period under consideration. The violence was organized and involved members of the militia and members of TNI; in some places, there was no distinction between the two as members of the militia were also members of TNI. In any event, it is clear that the highest level of the military command in East Timor knew, or had reason to know, that there was widespread violence against women in East Timor. There were cases of sexual slavery, sexual violence as a means of intimidation and sexual violence as a result of the climate of impunity created by the security forces operating in the island.

49. The Special Rapporteur heard several cases of testimony from women who were reportedly victims of sexual slavery. All the testimonies cannot be reproduced for lack of space. However, the following accounts indicate that TNI officers were both perpetrators of sexual violence and directly involved in the command of the militia.

50. V. was born on 4 April 1981 and was from Bobonaro. On 8 September 1999, the militia burned her family's house and they sought shelter in a nearby store owned by a Javenese Indonesian couple. All the victims of the area had gathered there and were guarded by TNI. Unfortunately, some TNI members were also militia members. V. was in the kitchen the day after the fire when a TNI soldier named Natalino offered 140,000 rupiahs to C., the wife of a TNI soldier named Sabino who was guarding the victims, to persuade V. to have sex with him. The woman ordered V. to have sex with the man. He had a gun so V. was terrified. She screamed for help, but the TNI soldier raped her. The following night he came again and took her away. This continued until the military decided to move to West Timor. The TNI soldier wanted to take her with him but she and her family refused, saying that she was the eldest child and had to take care of the others. She escaped to the hills and came down only after the situation was calm.

51. R. was also from Bobonaro, and was born on 6 August 1973. She was married and then divorced. On 8 September, her house was also burned to the ground. She and her family initially escaped to the house of a local militia leader whom they knew, but he was killed. On 10 September, they also went to the store where V. was staying; the militia and military were both on armed guard. She was approached by one of the militiamen, who told her that Commander Pedro of the militia, who was also a member of the Indonesian army, wanted her. Her mother tried in vain to protect her. The man brought her to the commander, who raped her in an empty house. R. was pointed out by the same woman who acted as intermediary in V.'s case. The following day Pedro brought her presents and Rp 200,000 and tried to persuade her to go to West Timor, but she refused. The next night, another TNI soldier named Sabino forcibly took her away from her parents and raped her in another empty house. The third night, Sabino brought another TNI soldier called Januario, who also took her away and raped her. Later, she managed to escape to the mountains and remained there until the situation had improved.

52. In addition to sexual slavery, sexual violence was also used as a strategy of intimidation, particularly during the period from January to July 1999. The violence included documented cases of torture. Intimidation was particularly directed against female family members whose husbands had left the village. The Special Rapporteur received many such allegations from the areas of Liquica and Viqueque. As the Special Rapporteur did not visit women victims in either of these areas, she was unable to verify the substance of the reports through direct testimony. However, non-governmental organizations have provided her with reports of several cases of violence against women whose husbands had left their homes, as well as violence against internally displaced women. The testimonies are detailed enough to be credible and should be investigated further.

53. The greatest amount of sexual violence took place as a result of the climate of impunity that pervaded the island during the months leading up to and after the consultation. The following cases of direct testimony give an indication of the type of impunity that prevailed.

54. A. is a 15-year-old girl from the Liquica district. On 18 September, a local militia leader, Alphonso Lauhata, came to take her and a friend to a rally of the Golkar political party. When they refused to go, the man threatened to kill her parents and burn their house down. The two girls therefore went to the rally. After that they were forced to go to a Golkar party. They stayed at the party until 3 a.m. and then were taken away. Three men followed them on motorcycles, all members of the local militia. Their names were Miguel, Pedro and Momo. A. and her friend were taken by Alphonso to the house of an aunt and left there. The three men broke into the house and asked for the girls. The members of the family fled. A. ran out of the house and hid near the regional parliament building, but the militiamen found her. She was first raped by Momo. As she was screaming, he took her sarong and stuffed it into her mouth. After Momo, Miguel took his turn and held a knife to her head. When they finished they threatened to kill her and her parents if she told anyone. After that they left.

55. Another case was that of J. On 6 September, the militia came and took her and her family to the army barracks of the Battalion 744 Becora of the Indonesian army. On 12 September, the family requested permission to return to their house. They needed to get approval from military headquarters. Francisco Suarez, a commander in the TNI army regiment, offered to take J. on his motorcycle to the headquarters. The family agreed. However, instead of taking her to the army headquarters she was taken to a faraway beach. She tried to jump off the motorcycle, but he held on to her legs. He stopped the bike and held a gun to her and said that he would not take her back unless she had sex with him. She begged him to leave her alone, saying that she was a Catholic and a virgin. He pushed her to the ground and raped her. After a while he raped her again. He gave her Rp 200,000 and took her back to her family.

56. Given the long-standing impunity enjoyed by TNI with regard to crimes of sexual violence in East Timor, there was no possibility of victims reporting the incidents or attempting to seek justice. As the refugees return from the mountains and West Timor, the number of stories will undoubtedly increase. Women's organizations and human rights organizations such as Fokupers and the East Timor Human Rights Commission are taking affidavits as the people arrive and begin to tell their stories. The full scale of the violence will only be known in a few months' time.

57. The Special Rapporteur also heard reports of violence against women in refugee camps in West Timor. There are allegations that girls were being taken out of the camp at night, raped and brought back. Though she heard this allegation from many non-governmental sources, it was not verified by any individual cases or direct testimony. Nevertheless, the persistence of the allegations requires that they be investigated by authorities who have access to refugee camps in West Timor. The only confirmation to have emerged was the case of a 24-year-old woman who had returned from West Timor. Médecins sans Frontières confirmed that they had transferred her to ICRC. She had been beaten and violently raped and was suffering from psychological trauma. ICRC had not reported the case to INTERFET, but agreed that all future cases would be referred to the investigating authorities.

58. The Special Rapporteur was concerned that INTERFET did not include any expertise in cases of sexual violence. There is no special unit or specially trained investigators who may be able to identify, report and investigate cases of violence against women. There is an urgent need to ensure that this is remedied and that INTERFET is given the support needed to ensure proper investigation of cases of sexual violence. The INTERFET Commander responded positively to this suggestion.

III. State responsibility

59. While most of the atrocities committed in East Timor must clearly be attributed to pro-integration militia elements, the information gathered and testimonies heard by the Special Rapporteurs leave little doubt as to the direct and indirect involvement of TNI and police in supporting, planning, assisting and organizing the pro-integration militia groups.

60. Close cooperation between militia elements and TNI has been witnessed and documented by UNAMET staff, who directly observed joint gatherings of TNI officers and militia groups at various locations throughout the territory. Participants and other witnesses report that a common purpose of these meetings was to convey strategic and tactical plans for acts of violence against supporters of independence. Most witnesses the Special Rapporteurs spoke to, including United Nations staff, stated that TNI or police units were often present when human rights violations were being committed by militia groups, but took no action to prevent the violence. On numerous occasions over several months, UNAMET staff directly observed TNI and Indonesian police units engaged in joint military-style operations with militia groups. As noted above, witnesses to the incident in Suai on 5 September implicate TNI and police units as having actively participated in the operation. A spouse of a TNI soldier testified that she had seen militia members being provided with arms at the Kodim (district military command) where her family had taken refuge. Families of TNI officers and police were reportedly moved to safety hours before the result of the popular consultation was to be announced, which would seem to indicate that the authorities were well aware of the violence that was to follow.

61. Consistent eyewitness testimonies of militia attacks against UNAMET offices in several locations indicate that TNI and police units which were present at the scene did nothing to stop or prevent the violence directed against the United Nations compounds. One UNAMET staff member who had supervised the voting in Atsabe on 30 August told the Special Rapporteur on extrajudicial, summary or arbitrary executions how a group of militiamen had surrounded the polling station and then opened fire in the direction of the UNAMET staff. When the witness and the other staff were loading the ballot boxes into their car before leaving, one local staff member was stabbed in the back by one of the militias. The man later died of his wounds after having been evacuated from the scene together with the other United Nations staff. About 10 Indonesian police officers were present and witnessed the incident without making any attempt to intervene.

62. Rape survivors reported collusion and close links between the militia, TNI and the police. Survivors' testimonies indicate that on many occasions no distinction could be made between members of the militia and members of TNI, as often they were one and the same person in different uniforms. It is reported that each militia group had one TNI officer in command of the group. Further testimony implicates TNI officers as perpetrators of sexual violence. Owing to the widespread nature of violations, it is clear that the highest level of the military command in East Timor knew, or had reason to know, that there was widespread

violence against women in East Timor. According to information received, no action was taken by the Indonesian authorities to prevent such acts or to prosecute the perpetrators in compliance with international law.

63. Credible information received by the Special Rapporteurs during their mission indicates that as at the end of 1998, at least 22 new militia groups had been formed in East Timor. Reports and testimonies further suggest that these groups were armed and paid by Indonesian army intelligence to unleash terror and violence in East Timor. It is alleged that the Satuan Tugus Inteligen (SGI) intelligence unit, which had operated in the area for many years, had been reorganized through Kopassus (one of the intelligence units of the Indonesian army) in late 1998 to recruit and train such militia groups in East Timor. In this connection, it should be noted that the TNI deployment in East Timor, as elsewhere in Indonesia, followed a structure which secured a solid army presence on all administrative levels, from the district to the village level. Many observers assert that this structure ensured military control on the local level and also allowed TNI to recruit and supervise pro-integration militia groups. A number of official documents indicating formal cooperation between TNI and militia groups have also been recovered from Indonesian government offices in East Timor.

64. Under annex I, article 3, and annex III, paragraph 1, of the Agreements signed on 5 May by Indonesia, Portugal and the Secretary-General (A/53/951-S/1999/513), the Government of Indonesia assumed responsibility for maintaining peace and security in East Timor in order to ensure that the popular consultation was carried out in a fair and peaceful way, and in an atmosphere free of intimidation, violence or interference from any side. Throughout the recent eruption of violence, starting in January 1999 and ending with the departure of TNI and the Indonesian police in early September, the Government of Indonesia kept the security arrangements firmly to themselves, despite widespread reports of killings, plunder and intimidation by militia groups acting in collusion with TNI and the police. Throughout this period the Government also gave repeated assurances to the United Nations and the East Timorese people that it would take measures to guarantee security and maintain law and order. At no time did the Government express its inability to do so or its intention to give up this responsibility.

65. There is a demand that the perpetrators of human rights violations be brought to justice. Most East Timorese the Special Rapporteurs spoke to, including representatives of CNRT, were open to a process of reconciliation, but not at the expense of justice. The past cannot remain shrouded in mystery. In such situations the victims continue to seek justice and are unable to come to terms with their sorrow and distress. Impunity gives rise to frustration and anguish, which eventually may result in renewed cycles of violence. In East Timor defenceless civilians were made victims of planned acts of violence, which were carried out without remorse and in full view of international observers and the media. The Indonesian authorities must meet their obligation to deny impunity for these atrocities. In the event that there is reluctance or lack of capacity on the part of the national authorities to investigate and prosecute these crimes, the perpetrators will have to be brought to justice under a broader, universal jurisdiction.

IV. International Force, East Timor

66. INTERFET, which is currently responsible for maintaining law and order, is carrying out its duties in a sensitive and efficient manner given the restraints under which it is working. Upon arrival and in its initial deployment phase, INTERFET encountered only sporadic resistance and was thus able to assume control over most of East Timor without significant use of force. However, casualties could regrettably not be completely avoided and six persons, suspected militiamen, were killed in armed clashes with INTERFET units. The Special Rapporteur on extrajudicial, summary or arbitrary executions was thoroughly briefed about the investigations into these cases by the INTERFET military police.

67. As far as the question of treatment of detainees is concerned, the conduct of INTERFET has been exemplary. The delegation met with six detainees in conditions in which it could be confident that the detainees would have no fear of speaking frankly of any complaints as to their treatment. There were none. ICRC, which has full access, confirmed that it too had received no complaints from any of the detainees. The tone was set by the Force Commander who, especially in the beginning, established the pattern by personally visiting the detention area. The establishment of a detention-management team also acts as a safeguard against abuse.

V. Conclusions and recommendations

68. The Special Rapporteurs received excellent cooperation and support from all UNTAET staff and INTERFET peacekeepers. They wish to pay particular tribute to the commitment and professionalism of the local

and international UNTAET staff, cheerfully doing their jobs under hardship conditions; many of them are former personnel of the United Nations Mission in East Timor (UNAMET) who with skill and bravery saw the referendum through to its conclusion and stood by the people of East Timor until UNAMET staff were eventually forced to withdraw. They also take pleasure in acknowledging the sensitivity with which INTERFET conducts its relations with the local population, as well as its openness to suggestions on how to deal with problems for which previous training could not have fully prepared it.

69. The Special Rapporteurs appreciated the positive and informative meetings they held with representatives of civil society, including CNRT and local non-governmental human rights organizations. They also welcomed the opportunity to visit an informal place of detention in the hands of Falintil personnel confronted with the unfortunate de facto situation of having to clarify which militia members denounced by the local population have sufficient prima facie evidence against them for INTERFET to be able to detain them. It was, on the other hand, a matter of regret that the Government of Indonesia could not agree to receive the delegation and allow it to benefit from the Government's perspective on the events.

70. Despite having read and seen much press and visual media coverage of the wanton destruction and arson of much of the country's housing and buildings, the Special Rapporteurs were still shocked by the sight, from the air and on the ground, of the catastrophe that had been inflicted on the people of East Timor, just as they were touched by the sense of joy and hope that the people evinced, despite this adversity, in the wake of their liberation.

71. It is still too early, on the basis of a short visit and the absence of many witnesses, more than 200,000 of whom are, at the conclusion of the visit, still held in precarious conditions in West Timor or elsewhere in Indonesia, to assess the full extent of the human rights violations and crimes that were perpetrated before and after the 30 August consultation. What is clear is that they took place in the context of an attack against the East Timorese population that overwhelmingly supported independence from Indonesia. They include murder, torture, sexual violence, forcible transfer of population and other persecution and inhumane acts, including destruction of property. These have all been committed on a scale that is widespread or systematic or both.

72. Even applying the strict standards of the International Court of Justice to establish State responsibility for the acts of armed groups in a context of external intervention (dependency of the group on the State) and the exercise of effective control of the group by the State, a standard which cannot reasonably be applied to a State's own acts and omissions of governance of its own people, there is already evidence that TNI was sufficiently involved in the operational activities of the militia, which for the most part were the direct perpetrators of the crimes, to incur the responsibility of the Government of Indonesia. What still remains to be determined is how much of TNI and to what level in the hierarchy there was either active involvement or, at least, culpable toleration of the activities.

73. The questions of the full documentation of the crimes and human rights violations and the definitive establishment of the scope and level of TNI responsibility will need to be answered by a sustained investigative process. The East Timorese judicial system, which still needs to be created and tested, could not hope to cope with a project of this scale. It is clear that the best efforts of INTERFET/UNTAET, geographically limited as they will be, or of the United Nations Commission of Inquiry, limited in time and powers as it will be, are unlikely to lead to the carrying out of complete investigations into the full range of crimes that require to be clarified. The record of impunity for human rights crimes committed by Indonesia's armed forces in East Timor over almost a quarter of a century cannot instil confidence in their ability to ensure a proper accounting. Nor, given the formal and informal influence wielded by the armed forces in Indonesia's political structure, can there, at this stage, be confidence that the new Government, acting in the best of faith, will be able to render that accounting. The investigative forces will need to feed into a system which ensures that those responsible are brought to justice. The same factors that argue for international investigation argue similarly for an international judicial process. So far CNRT, Falintil and, under their encouragement, the East Timor population have, despite occasional excesses, been extremely disciplined in not resorting to summary "justice". But there is a fear that unless justice is provided, it may not be possible to maintain this discipline.

74. Accordingly the Special Rapporteurs make the following recommendations:

1. The Government of Indonesia should immediately comply with its memorandum of understanding with the Office of the United Nations High Commissioner for Refugees by securing unimpeded access of UNHCR to the camps in West Timor where a quarter of the East Timorese population is held, so that the speedy return to East Timor of those who so wish may be effected.

2. The Government of Indonesia should comply with the call of the Indonesian National Commission of Human Rights to disband the militias, both with a view to facilitating the implementation of the previous recommendation and to ensure that the territorial integrity of East Timor is safeguarded from any further disruption, especially when INTERFET leaves.

3. Rapid action should be taken to meet the most pressing need of UNTAET with regard to expertise in forensic anthropology and pathology, autopsy facilities, medical professionals, in particular those qualified to conduct medical examinations of possible victims of rape and sexual abuse, criminal investigation with appropriate equipment and logistical support, human rights investigators, human rights training and liaison officers, and relevant staff for an effective information storage and retrieval system.

4. Substantial psychiatric and other specialized resources for counselling and rehabilitation of victims of human rights violations, including forced displacement, should be made available to those in need of them.

5. If, as may well be the case, the Commission of Inquiry is unable to provide a full documentation of State, institutional and individual responsibility for the crimes committed in the past year, further investigative measures will be needed, including those that would be appropriate for preparing cases for an international criminal tribunal.

6. Unless, in a matter of months, the steps taken by the Government of Indonesia to investigate TNI involvement in the past year's atrocities bear fruit, both in the way of credible clarification of the facts and the bringing to justice of the perpetrators — both directly and by virtue of command responsibility, however high the level of responsibility — the Security Council should consider the establishment of an international criminal tribunal for the purpose. This should preferably be done with the consent of the Government, but such consent should not be a prerequisite. Such a tribunal should then have jurisdiction over all crimes under international law committed by any party in the Territory since the departure of the colonial Power.

7. To ensure the effective enjoyment of the right to participate in the governance of their country, UNTAET should make particular efforts to involve the East Timorese in the devising and execution of all the measures of institution-building and governance, including economic development, that will be undertaken during the transition to independence. The greater the range to the implications of these measures, the closer the local involvement needs to be. It is especially necessary that consultations with and involvement of the population not be perceived, however erroneously, as being token in nature.

8. As appropriate, the international community as a whole should stand ready to assist UNTAET in the development of its work. For example, the current crash programme of developing a judiciary and a corps of prosecution and defence lawyers will require the provision of substantial training resources in Indonesian law and international human rights law.

9. Special attention should be given by UNTAET, with the support of the international community, to nurturing and supporting the non-governmental organizations and other institutions of civil society, *inter alia*, financially, with training and technical assistance, with material infrastructural needs.